

## **REMARKS/ARGUMENTS**

This document is filed in response to the Notice of Non-compliant Amendment mailed April 8, 2005.

### **Substitute Specification:**

The Examiner has objected to the specification because of the number or nature of the amendments that have been entered. The Applicant has prepared a substitute amendment, which is attached as Appendix A.

The substitute specification contains no new matter. The Applicant believes that the substitute specification contains only subject matter from the original specification and previously entered amendments as found by a review of the file wrapper through the use of PAIR. A marked up copy of the substitute specification (showing changes made to the specification of record) is attached as Appendix B.

### **Claims Informalities**

The Examiner correctly pointed out that two Claims were not properly annotated, as to whether they were new, previously presented, etc.. The Claims are now all properly annotated. The Applicant requests that the Claims be entered and examined.

The Examiner has objected to claims 12 and 41. The Examiner was uncertain whether the word "restruictions" in claim 12 was meant to be "restricitons" as used in claim 41. The Applicant has amended claim 12 to replace the word "restruictions" with the word "restricitons". The meaning of both claims 12 and 41 is now clear.

### **Claims Rejections Under 35 USC Section 103**

5 The Examiner has rejected all of the claims under 35 USC Section 103(a). Specifically, the Examiner has stated the following rejections:

The Examiner has rejected claims 1-2, 32, and 34 under 35 USC Section 103(a) in light of US patent 5,995,947, issued to Fraser et al., over US patent 5,940,812, issued to Tengal et al.

10 The Examiner has rejected claims 3-24, 30, 43-48, and 55 under 35 USC Section 103(a) in light of US patent 5,995,947, issued to Fraser et al., and US patent 5,940,812, issued to Tengal et al., in view of US patent 6,192,347, issued to Graff.

15 The Examiner has rejected claims 25-28, 31, 49-54, 56-59, and 62-64 under 35 USC Section 103(a) in light of US patent 5,995,947, issued to Fraser et al., and US patent 5,940,812, issued to Tengal et al., and US patent 6,192,347, issued to Graff, in view of Dictionary of Business Terms.

### **Traverse of Examiner's Rejections under 35 USC Section 103(a)**

20 The Applicant has carefully reviewed the Examiner's arguments. The applicant has amended each of the independent claims (1 and 32) to add the following limitations which are fully supported in the specification and drawings of the applications.

25 "making a loan origination fee paid to the loan originator at a time of closing on the mortgage loan legally compliant with the guidelines of the Real Estate Settlement Procedures Act ("RESPA");"

"wherein the loan originator is not the loan customer."

The Applicant respectfully asserts, as will be discussed in more detail below, that none of the prior art cited by the Examiner includes the above-listed novel and non-obvious limitations.

### **Discussion of the Cited Prior Art:**

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The Applicant finds that Fraser (US 5,995,947) does not teach mortgage origination through a loan originator distinct from the loan broker and the lender. Consider Figure 1 of Fraser. There are broker stations and lender stations, but no distinct loan originator stations. Consider Figure 2 of Fraser. There are paths for borrower/broker entry, lender entry, accept bid, and qualify borrower.  
10 This is the only other figure in the patent. Nowhere are the system interface or operational process of a loan originator distinct from the loan broker shown, disclosed, taught or suggested.

The Applicant finds that Tengel et al. (US 5,940,812) does not teach mortgage origination through a loan originator distinct from the loan customer, the loan broker and the lender. Consider  
15 Figure 1 of Tengel. There are consumer terminals and lender terminals. There are no distinct loan originator terminals. There are no distinct loan broker terminals. Nowhere in the Figures nor in the text of this patent are these distinct elements shown, disclosed, taught or suggested.

The Applicant finds that all the cited prior art, taken individually or collectively, does not  
20 show, disclose, teach or suggest a loan originator distinct from the loan customer, the loan broker and the lender.

The Applicant further finds that all the cited prior art, taken individually or collectively, does not show, disclose, teach or suggest that the loan originator providing services necessary for the  
25 origination of the mortgage loan and not duplicative of services provided by the loan broker. That these activities make a loan origination fee paid to the loan originator at a time of closing on the mortgage loan legally compliant with the guidelines of the Real Estate Settlement Procedures Act ("RESPA").

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### **Discussion of the Claims:**

Regarding the rejection under 35 U.S.C. 103(a) of Claims 1 and 32 (as amended), the Applicant finds that Fraser (US 5,995,947) does not disclose and does not teach a loan originator, distinct from the loan broker, performing necessary services, which are not duplicative of the loan broker, for the origination of a loan. RESPA does not support loan origination fees being paid to the loan originator without such these elements, as already mentioned and cited from paragraph [7] of the patent application.

Appendix B of the Amendment mailed June 4, 2004 contains an article entitled "Stay in Tune with RESPA", which points out the necessity of RESPA compliance in situations involving a loan originator other than the loan broker. A discussion of RESPA compliance for loan originators distinct from loan brokers was unnecessary for the cited prior art, because the elements of the invention, a loan originator distinct from the loan broker and the lender, were not present.

These elements of the invention are not accidental, but as indicated by the previously submitted copy of a letter from a lawyer to one of the inventors, was an intentional, researched, and necessary part of the invention. The Applicants submit that neither Fraser nor Tengel (US 5,940,812) teach or suggest these limitations. The Applicants submit that they cannot be combined to provide them. The Applicant respectfully requests that the Examiner remove the rejection from these Claims, and that they be placed in a condition for allowance.

**Claims 2, 3, 12 to 20, 22 to 25, 27 to 29, 31, and 60 to 63** are dependent upon Claim 1. Based upon the above argument for Claim 1, as well as the discussion of the cited prior art, and novel and nonobvious features claimed in these claims, the Applicant believes these Claims are patentable in light of the cited prior art. The Applicant requests that the Examiner remove the rejection of these Claims, and place them in condition for allowance.

**Claim 33 to 43, 45, 46, 48 to 50, 52 to 56, 58 and 59** are dependent upon Claim 32. Based upon the above argument for Claim 32, as well as the discussion of the cited prior art, and novel and nonobvious features claimed in these claims, the Applicant believes these Claims are patentable in

light of the cited prior art. The Applicant requests that the Examiner remove the rejection of these Claims, and place them in condition for allowance.

### Conclusion

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The Applicant believes that all the objections to this application have been addressed, and the Applicant requests that the Objections to the claims be removed from the Application. The Applicant believes that the provided arguments address all the rejections raised by the Examiner, and respectfully request that the Claims be allowed. The Applicant further respectfully requests that a  
10 timely Notice of Allowance be issued in this case.

If we may be of any assistance in this case, please feel free to contact Earle Jennings or Gregory Smith at (510) 742-7417.

15 Very respectfully submitted,

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#### CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as attached hereto, addressed to Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313, will be deposited with the U.S. Postal Service as first class mail with sufficient postage at Newark on June 2, 2005

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Signature   
Evanjin M. Dasalla

Date: June 2, 2005